

REMARKS

In the Notice of Non-Complaint Amendment ("Notice"), the Examiner advised that, in the Remarks section of the Amendment dated August 14, 2006, "the amendment indicates that claims 1 and 6 have amended the phrase 'the majority' to the phrase 'over half.' However, in claim 1 the first instance of the phrase 'the majority' has been changed to read 'or not half of.'" (See p. 2.) As a result, the Examiner instructed Applicant to correct either the claims or remarks, apparently, so that each exactly reflects the amended language. In response, Applicant resubmits a corrected version of the Amendment including revised remarks. (See *infra*.) Applicant respectfully requests entry of this Amendment, and a timely examination of the present application.

In the Office Action mailed April 14, 2006, the Examiner rejected claims 1, 4-6, 9, and 10 under 35 U.S.C. § 112, second paragraph as being indefinite, and rejected these claims under 35 U.S.C. § 103(a) as being unpatentable over 'Distributed Algorithms,' by Nancy A. Lynch ("*Lynch*") in view of alleged facts taken by the Examiner's Official Notice ("Official Notice").

By this Amendment, Applicant, amends claims 1, 4-6, 9, and 10 to further clarify the previously recited subject matter. Claims 1, 4-6, 9, and 10 are pending in the above-captioned patent application.

Rejection Under 35 U.S.C. § 112, Second Paragraph

The Examiner rejected claims 1, 4-6, 9, and 10 under 35 U.S.C. § 112, second paragraph as being indefinite. Although Applicant does not necessarily agree with the Examiner, Applicant has amended claims 1, 4-6 and 9, and 10 to overcome this

rejection. In particular, the Examiner rejected claims 1, 4-6, 9, and 10 as being indefinite under Section 112 because the term “self computer” is allegedly unclear to one of ordinary skill in the art. Accordingly, Applicant has deleted the term “self” from independent claims 1 and 6, as well as claims 4, 5, 9 and 10 which depend from claim 1 and 6.

Also with respect to claims 1 and 6, the Examiner contends that the phrase, “the majority of collected input data items” is indefinite. Applicant has amended claims 1 and 6 to delete the phrase “the majority.” As amended, claim 1 recites, *inter alia*, “...determine whether or not half of the collected input data items having identical contents are present,” “discard all the input data items of other candidates, when over half of the collected input data items are present,” and “... determines that over half of the collected input data items are not present” (emphasis added). As amended, claim 6 recites, *inter alia*, “... determining whether or not over half of the collected input data items having identical contents are present,” “discarding all the input data items of other candidates, when over half of the collected input data items are present,” and “discarding all the input data items of other candidates, when it is determined in the second input candidate selection control step that over half of the collected input data items are not present” (emphasis added).

In regard to claims 4 and 9, the Examiner asserts that the phrase “settled step is most advanced” is indefinite. By this Amendment, Applicant has deleted this phrase from claims 4 and 9.

In light of the above-noted changes to claims 1, 4-6, 9, and 10, Applicant submits that these claims satisfy the requirements of 35 U.S.C. § 112, second paragraph.

Accordingly, Applicant respectfully requests that the Examiner reconsider and withdraw the rejection under 35 U.S.C. § 112, second paragraph.

Rejection Under 35 U.S.C. § 103(a)

The Examiner rejected claims 1, 4-6, 9, and 10 under U.S.C. § 103(a) as unpatentable over *Lynch* in view alleged facts taken by Official Notice. (Office Action, p. 3.) Applicant respectfully traverses this rejection because, among other things, neither *Lynch* nor the alleged facts taken by Official Notice, taken alone or in any proper combination, teach or suggest, at least, a “journal” as recited in Applicant’s claims.

Moreover, there is no teaching or suggestion in the applied prior art of “a first input candidate selection control device configured to... settle one of the input data items having identical contents as next data to be processed... a journal device configured to hold the input data item settled by the first input candidate selection control device... and; each of the first input candidate selection control device, the second input control input candidate selection control device, and the third candidate selection control device including: a first input candidate adjustment control device configured to send the input data item held in the journal device as a settled input data item, when another computer collects an input data item of a step that has already been settled in the computer, and a second input candidate adjustment control device configured to settle an input data item as next data to be processed, when the input data item is sent from another computer as a settled input data item upon collecting input data items by the input candidate collection device” (emphasis added).

Lynch is not only silent as to the claimed “journal device,” but also as to the conditions under which the “journal device” functions. For instance, *Lynch* does not disclose or suggest “send[ing] the input data item held in the journal device as a settled input data item, when another computer collects an input data item of a step that has already been settled in the computer” (emphasis added), as claim 1 recites. Applicant advises that *Lynch* discloses a method for determining data to be processed by majority logic. However, according to the Applicant, *Lynch* is merely applicable to the case where data to be processed is determined only for a single process. Applicant further advises that *Lynch* does not relate to cases where data items to be processed continuously by n computers are determined in the order of, for example, data A, data B, data C, ...data X, and thus, *Lynch* does not disclose or suggest that the progress difference occurring among n computers is automatically adjusted by controlling and utilizing the claimed “journal device.”

The facts alleged by Official Notice also do not teach or suggest the above noted features of the “journal device” recited in claim 1. To the extent the Examiner addresses this feature at all, the Examiner merely relies on Official Notice in asserting that “it would have been obvious to one skilled in the art, to have such steps in order to execute the Ben-Or algorithm and have the algorithm function properly.” (Office Action, page 4, line 22 to page 5, line 3.) Applicant disagrees. The Examiner improperly relies on Official Notice in concluding that the recited features “would have been obvious to one skilled in the art” because the Examiner has failed to provide any documentary evidence supporting his assertion or an otherwise convincing line of technical

reasoning. Accordingly, Applicant requests that the Examiner provide such evidence in the form of prior art or Examiner's affidavit. (See M.P.E.P. § 2144.03(C).)

In addition, nothing in the facts taken by Official Notice disclose or suggest, for example, "a journal device configured to hold the input data item settled by the first input candidate selection control device... and; each of the first input candidate selection control device, the second input control input candidate selection control device, and the third candidate selection control device including: a first input candidate adjustment control device configured to send the input data item held in the journal device as a settled input data item, when another computer collects an input data item of a step that has already been settled in the computer" (emphasis added), as recited in claim 1. Applicant advises that, consistent with the present invention, a distributed system having a method of journal utilization is provided that is different from that of conventional computer systems. Consistent with the present invention, each of the first, second, and third input candidate selection control devices includes both a first input candidate adjustment control device to eliminate the progress delay in computers other than a given one and a second input candidate adjustment control device to eliminate the progress delay in the given computer. Accordingly, the facts alleged by Official Notice do not teach or suggest the "journal device," as recited in claim 1.

Furthermore, nothing in *Lynch* or the alleged facts taken by Official Notice teach or suggest the combination proposed by the Examiner. Contrary to the Examiner's assertion, Applicant submits it would not have been easy for a person skilled in the art to obtain such features of the present invention. Thus, even if the features alleged by Official Notice were known (which Applicant does not concede), without having

motivation to make the asserted modification of *Lynch*, the Examiner has failed to establish a *prima facie* case of obviousness. Here, the Examiner's only basis for the proposed modification of *Lynch* is to make the Ben-Or algorithm work. However, there is no evidence in the Office Action that the features of Claim 1 were known, and even if they were, there also is no evidence that such features would be needed to make the Ben-Or algorithm work. Apparently, the Examiner's only motivation for the proposed modifications to *Lynch* is to reconstruct the claimed invention based on improper hindsight knowledge of the Applicant's disclosure. Thus, the Examiner has failed to establish a *prima facie* case of obviousness because the Examiner has offered no proper motivation to modify *Lynch*.

Because neither *Lynch* nor the alleged facts taken by Official Notice teach or suggest the above-noted features of claim 1, these references cannot support a *prima facie* case for the rejection of claim 1 under 35 U.S.C. § 103(a). Accordingly, Applicant submits that claim 1 is allowable over the applied reference and claims 4 and 5 are allowable at least due to their dependence from claim 1.

Claim 6, although of different scope, recites features similar those of claim 1. Therefore, the cited reference also cannot support a rejection of claim 6 under 35 U.S.C. § 103(a) for similar reasons as discussed above for claim 1. Further, claims 9 and 10 also are allowable at least due to their dependence from claim 6.

Conclusion

In view of the foregoing, pending claims 1, 4-6, 9 and 10 are in condition for allowance, and Applicant requests a favorable action.

Applicant encourages the Examiner to contact the undersigned representative by telephone to discuss any remaining issues or to resolve any misunderstandings.

Please grant any extensions of time required to enter this response and charge any additional required fees to our deposit account 06-0916.

Respectfully submitted,

FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, L.L.P.

Dated: November 30, 2006

By: 

Steven L. Ashburn
Reg. No. 56,636

Attachment: Copy of Notice of Non-Complaint Amendment mailed October 30, 2006 (3 pages).